South Carolina Department of Insurance

NIKKI R. HALEY
Governor

RAYMOND G. FARMER
Director

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
COUNTY OF RICHLAND) DEPARTMENT OF INSURANCE

IN THE MATTER OF:) CORRECTIVE ACTION ORDER
SELF-FUNDED RATES FOR THE) 2015-002
WORKERS' COMPENSATION)
ASSIGNED RISK PLAN.)
)

This matter comes before me pursuant to the provisions of S.C. Code Ann. § 38-73-540(C) (2015). Section 38-73-540(C) provides:

> It is essential for maintaining the viability of the assigned risk plan to establish and maintain rates at a level which permits the plan to operate as a self-funded mechanism. The plan administrator shall maintain necessary rate making data in order to permit the actuarial determination of rates and rating plans appropriate for the business insured through the plan. All assigned carriers shall report their experience on business written under the plan to the plan administrator in a format prescribed by the plan administrator. The plan administrator shall monitor rate adequacy and plan results and shall notify the director of the Department of Insurance in the event that excessive losses are indicated so as to enable the director to take corrective action.

This order implements corrective action so that assigned risk rates can be self-sustaining, and so that the assigned risk plan can continue to be a market of last resort for employers who are unable to secure workers' compensation insurance in the voluntary market.

Requests for insurance loss cost and assigned risk revisions were governed by S. C. Code Ann. § 38-73-910, which required notice of a rate increase and a public hearing, if requested. In 1998, S.C. Code Ann. § 38-73-540(C) was amended to ensure assigned risk rates are self-sustaining. This section also provides a mechanism for corrective action in the event current rates are not adequate. The corrective action procedure under § 38-73-540(C) was recognized as a permissible alternative to the hearing procedure *in NCCI v. South Carolina Department of Insurance and Philip S. Porter*, ALJ Docket No. 00-ALJ-09-0687 (2001). In this decision, Judge Kittrell opined:

> I find and conclude that the current predicament of assigned risk servicing carriers alluded to by several witnesses is not without redress. NCCI may file for new assigned risk rates and provide newer data which might substantiate the request for a rate increase. ***I also note that S.C. Code Ann. §38-73-540(C) provides an alternate and flexible remedy.*** Under

> that section, assigned risk carriers shall report their experience to the plan administrator who shall notify the Department to enable the director of the Department to take corrective action, if necessary. ***Nothing in this ruling precludes the servicing carriers from having their rate needs addressed in this way.*** *(Emphasis added).*

Judge Kittrell's opinion recognized the authority of this Department to take corrective action pursuant to § 38-73-540(C) upon notice from the Plan Administrator that excessive losses exist within the assigned risk plan. Further, the Department's 2005 Corrective Action order implemented the process for synchronizing rates and rule changes in the voluntary and assigned risk workers compensation insurance markets. Revised voluntary loss costs have been approved with an effective date of September 1, 2015.

Under S.C. Code Ann. § 38-73-540(C), the plan administrator is required to monitor rate adequacy and plan results and is required to notify the director of the Department of Insurance in the event excessive losses are indicated so as to enable the director to take corrective action. Accordingly, the National Council on Compensation Insurance Inc. (NCCI), as the Plan Administrator for the State of South Carolina, sent a letter to the Department on March 24, 2015 advising that excessive losses are indicated for the assigned risk plan and are jeopardizing the ability of the plan to operate as a self-funded mechanism. That notice is attached to this Order as Exhibit A.

The Department's internal property and casualty actuary, Will Davis, FCAS, MAAA, reviewed the letter and other supporting data received from the Plan Administrator. His recommendations are contained in a confidential report to the Director. The revised rates and rating values for South Carolina's assigned risk market were provided to and reviewed by the South Carolina Consumer Advocate without objection.

When losses in a particular class (or classes) are excessive, there is a need to correct the class relativities to reflect higher expected losses. The fact that the resulting *overall* impact is a decrease does not invalidate the NCCI's assertion that assigned risk losses are excessive, requiring corrective action to revise the assigned risk rate level.

I hereby adopt and approve the recommendations contained in that report and conclude that corrective action is necessary to ensure that the assigned risk plan is self-funded and self-sustaining in accordance with the requirements of § 38-73-540(C).

IT IS THEREFORE ORDERED THAT in calculating the revised rates and rating values for the industrial class codes in South Carolina's assigned risk market, a loss cost multiplier of 2.112 shall be applied to the September 1, 2015 South Carolina voluntary market loss costs, subject to the constraint that changes to individual class codes be limited to the applicable industry group change in the voluntary loss cost filing +/- 35%.

Based on the most recently available distribution of payroll by class code in the assigned risk market, the proposed change in the assigned risk loss cost multiplier, and the voluntary market loss cost level changes effective September 1, 2015, the impact will be an estimated decrease of 0.3% in the assigned risk rate level results.

The average class level changes by industry group are as follows:

	Average	Maximum Decrease	Maximum Increase
Manufacturing	+0.6%	-31%	+39%
Contracting	-1.2%	-33%	+37%
Office & Clerical	-4.0%	-37%	+33%
Goods & Services	+2.4%	-34%	+36%
Miscellaneous	-0.8%	-32%	+38%

IT IS FURTHER ORDERED THAT revised assigned risk rates for the federal and coal mine class codes shall be calculated via application of a loss cost multiplier calculated based on the same expense and differential provisions underlying the industrial class codes' 2.112 loss cost multiplier and reflecting the most recent federal assessment and benefit levels.

Submitted this 11th day of June, 2015.

Raymond G. Farmer

Raymond G. Farmer
Director